Remarks

Claims 1-9, 11-14 and 26-31 are pending in the application.

With this amendment, claims 1, 9, 26, and 27 are amended. No claims are cancelled and no claims are added.

The amendments are supported by the specification as originally filed, for example, at original figure 8, at original paragraph [0033], and original claim 4, which each show and describe tissue approximating structure that can be extended and retracted from a catheter body wall at a distal end of an anastomosis device.

Claims 1-9, 11-14 and 26-31 remain in the application for consideration.

Reconsideration and allowance of the claims as amended in light of the following remarks, are respectfully requested.

Claim Rejections - 35 USC § 103

Claims 1-3, 7-9, 12-14 and 26-31

Claims 1-3, 7-9, 12-14, and 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salama (U.S. Patent No. 5,306,226) in view of Orban, III (U.S. Publ. No. 2005/0251155).

The rejection is traversed or alternately overcome by amendment to independent claims 1, 9, and 26, which have been amended in an earnest effort to advance prosecution and allowance of the pending claims. The amendment is not believed to be necessary to overcome the outstanding rejections, and Applicants reserve the right to prosecute the pending non-amended claims, at a future time.

The claims have been amended to specify that tissue approximating structure can be extended and retracted from the catheter body wall (at a distal end of an anastomosis device).

The Salama reference is cited for its description of a flexible catheter body having a proximal end and a distal end, inflatable balloon, drainage aperture:

> *Salama discloses the claimed device, including a tissue approximating structure or means located on a proximal side of the drainage aperture,* except for *the tissue approximating structure or means being at the distal end of the catheter body, . . .*

The Office action indicates that the Salama reference does not identically teach the feature of tissue approximating structure at a distal end a catheter body.

The Orban reference fails to remedy the shortcoming of the Salama reference. The Orban reference is not combinable with the Salama reference in a manner that would result in the combination of features recited in amended claims 1, 9, and 26, or claims dependent thereon.

Tissue approximating structure of the Orban reference is used by being expelled distally out of an open lumen at the distal end of an elongate delivery tool. The Orban reference exclusively relates to an operation of expelling the stent from the open distal end of the inserter device, followed by removal of the inserter device from the patient while the stent remains internal to the patient. Structure of the Orban device is not capable of being extended and retracted from a catheter body wall.

Ultimately, because of the required differences in the Salama and Orban devices and their intended utility and function, an attempt to combine tissue approximating structure of the Orban device with the device of Salama would not result in a device as claimed, having tissue approximating structure that can be extended and retracted from a catheter body wall. To combine these references to produce the claimed subject matter would require that the element of the tissue approximating structure of the Orban reference be taken out of the context of the Orban reference, in isolation, and applied to the Salama reference in a manner that is inconsistent with the use of the structure by the Orban reference; it would require one to ignore the specific and exclusive manner in which the Orban reference inter-relates the tissue approximating structure with the inserter device and the manner in which the inserter device is used to expel the stent from the open distal end of the inserter device to place the stent, then remove the inserter device while the stent remains internal to the patient. The patent laws require that prior art references be considered in their entireties. When so considered, the cited references are not combinable to achieve the claimed subject matter.

Regarding claims 4, 5, and 6, these specify that tissue approximating structure can be extended from apertures in the catheter body. The Orban reference again is inconsistent with an operation of extending tissue approximating structure from a catheter body at all, but especially through apertures in the catheter body.

Claims 4-6 and 11

Claims 4-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salama (U.S. Patent No. 5,306,226) and Orban (U.S. Publ. No. 2005/0251155), as applied to Claims 1, 3, and 9 above, and further in view of Biggs et al. (U.S. Patent No. 6,599,311).

These rejections are traversed overcome by amendment in the same fashion as applied above with respect to the rejection of claims 1-3, 7-9, 12-14 and 26-31.

The additional reference, Biggs et al., does not remedy the shortcomings of Salama and Orban with respect to the features of independent claims 1 and 26 as amended.

In view of the present amendments and remarks, consideration of the claims as amended, and allowance of the pending claims, are respectfully requested.

The Examiner is invited to contact the undersigned, at the Examiner's convenience, should the Examiner have any questions regarding this communication or the present patent application.

Respectfully Submitted,

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By: _____

Daniel C. Schulte, Reg. No. 40,160
Customer Number 33072
Phone: 651-275-9806
Facsimile: 651-351-2954

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